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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,731

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Peter Gerrard

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EXAMINER

EPSHTEYN, ALEXANDER

ART UNIT

PAPER NUMBER

3714

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/632,731

Applicant(s)

GERRARD ET AL.

Examiner

Alex Epshteyn

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims convey a negative limitation that the purchased cards are evaluated without regard to any of the cards already in the player's hand. The examiner does not find support in the specification for such a limitation and Applicant is invited to state precisely where in the specification support for such a limitation is described.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 13-26, 30-36, 39-42, and 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US Patent 6,176,781) in view of Yoseloff (US Patent 6,227,969).

In regards to claims 1-7, 18-24, and 35, Walker teaches of a method of operating a poker game comprising receiving an initial wager from a player (3: 5-14), dealing a hand to a player including a first plurality of cards from a deck of cards, where a hand is an initial purchase of as many cards as the user wishes (2: 1-9) and then dealing a second plurality of cards to the player from the deck of cards, where the second plurality of cards is also a purchasable card for the player, enabling the player to end the poker game or purchase one of the second plurality of cards to add to the hand for an additional wager, and repeating the above described method until there are no remaining cards in the second plurality of cards for the player to purchase or the player ends the game, whereupon if an end event criteria is satisfied, an award is provided to the player if the hand includes a winning combination of cards (5: 40-67). The purchased cards are added to the player's hand such that the quantity of the cards in the players hand increases where the quantity of player cards increases and the cards are added to the players hand without regard to any of the cards already in the player's hand (5: 40-67). Walker also teaches of enabling the player to add the purchased card to his original poker hand for an opportunity to form a better poker hand (6: 20-36). The first plurality of cards are dealt face up and the added one of the cards is also displayed face up to the player (figures 5A – 5D).

Walker teaches that the purchased cards are dealt face up. However, dealing cards face down is an obvious variant to one skilled in the art. As an example, Yoseloff, in the same field of endeavor, teaches of a similar poker game with a first hand of cards and a second hand of cards that can be purchased, where the second

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hand of cards is dealt face down (5: 1-8). Yoseloff further teaches of displaying the cards face up to the player if the player purchases the cards (6: 20-27). It would be obvious for one skilled in the art at the time the invention to incorporate dealing the second hand of cards face down to increase the excitement and anticipation of purchasing additional cards.

In regards to claims 8 and 25, Walker teaches of enabling the player to select which of the second plurality of cards to add to the hand if the player purchases one of the second plurality of cards to add to the hand (5: 58-62).

In regards to claims 9, 26, and 36, Walker teaches that the player may purchase as many additional cards as they would like and as such the first plurality of cards and the second plurality of cards can include the same number of cards.

In regards to claims 13 and 30, Walker teaches a deck of cards for use in the card game that includes a standard deck of 52 cards and the winning combination of cards includes standard poker winning combinations (4: 10-45).

In regards to claims 14, 15, 31, 32, 39, 40, 46, and 47, Walker teaches of operating the gaming machine in a data network which is the internet or any other type of data network (3: 5-13).

In regards to claims 16, 33, 41, and 48, Walker teaches of cards that are virtual and are displayed by a display device of a gaming machine (Figures 5A – 5D).

In regards to claims 17, 34, 42, and 49, Walker teaches of a memory device that stores computer instructions for implementing the game as described above (Figure 1).

Claims 10-12, 27-29, 37-38, 43, and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US Patent 6,176,781) and further in view of Wilcox et al. (US Patent 5,019,973).

In regards to claims 10-12, 27-29, 37-38, 43, and 44-45, Walker does not explicitly teach that each additional card purchase should be proportional to the function of the potential win and is different for each purchase. In the same field of endeavor, Wilcox teaches of a card game where a player can purchase additional cards and with each purchase of a card, the wager will be increased. Thus, with a higher amount of cards, a player has a potential for a greater win and as such, each wager amount should be increased accordingly (5: 44-55). It would be obvious for one skilled in the art to charge an increased amount for each subsequent card purchase such as Wilcox teaches since each card purchase enhances the odds of gaining a higher prize and as such the payout could further be increase to draw more attention to the game. With regards to the proportionality limitations of the present invention, It is simply a matter of design choice for one skilled in the art to choose a proportionality requirement for increasing the wager amount of each subsequent card purchase as taught by Wilcox since Applicant has not stated a reason that any increase in wager amount as listed in claims 10-12 provides an advantage or solves a stated purpose. One skilled in the art, furthermore, would have expected Applicant's invention to perform equally as well with any other mathematical proportionality formula for selected how a wager would be increased for each card purchase.

Response to Arguments

Applicant's arguments with respect to claims 1-49 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Epshteyn whose telephone number is 571-272-5561. The examiner can normally be reached on M-F 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AE

Greg V. Dand
SPE
TC 3700